



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 262 OF 2013**

<b>SAMSON ARAP BII</b>	<b>1<sup>ST</sup> CLAIMANT</b>
<b>CHARLES K. CHEPKWONY</b>	<b>2<sup>ND</sup> CLAIMANT</b>
<b>SIMON MALEI</b>	<b>3<sup>RD</sup> CLAIMANT</b>
<b>PAUL BII</b>	<b>4<sup>TH</sup> CLAIMANT</b>
<b>DAVID KETER</b>	<b>5<sup>TH</sup> CLAIMANT</b>
<b>GRACE CHEPKEMOI</b>	<b>6<sup>TH</sup> CLAIMANT</b>
<b>ANN CHEPKOECH</b>	<b>7<sup>TH</sup> CLAIMANT</b>
<b>HELEN CHEPKORIR</b>	<b>8<sup>TH</sup> CLAIMANT</b>
<b>ALICE CHELEGAT</b>	<b>9<sup>TH</sup> CLAAIMANT</b>
<b>JANE CHEPCHIRCHIR</b>	<b>10<sup>TH</sup> CLAIMANT</b>
<b>v</b>	
<b>BENARD KIPLAGAT KILELE</b>	
<b>t/a NORTH NJORO FARM</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>RONALD KIPNGETICH KILELE</b>	<b>2<sup>ND</sup> RESPONDENT</b>
<b>ANNE NAANYU KILELE</b>	<b>3<sup>RD</sup> RESPONDENT</b>

**RULING**

1. The 10 Claimants jointly sued the 1<sup>st</sup> Respondent on 16 August 2013 alleging wrongful dismissal and seeking salary arrears and damages. The 1<sup>st</sup> Respondent filed a Response on 26 September 2013.
2. On 21 February 2014, the Claimants filed an application seeking to join Ronald Kipngetch Kilele and Ann Naanyu Kilele as third parties. Ongaya J allowed the application and ordered that the 2

persons be added as Respondents. Consequently, an Amended Memorandum of Claim was filed on 10 March 2014.

3. On 3 April 2014, the Claimants filed an application seeking restraining orders against the Respondents from interfering with their stay in certain parcels of land. The orders were granted on the same day.

4. On 11 April 2014, the 2<sup>nd</sup> Respondent filed a Response while the 3<sup>rd</sup> Respondent entered appearance on 30 April 2014.

5. The 3<sup>rd</sup> Respondent filed a Response and Notice of Preliminary objection on 16 May 2014 questioning the jurisdiction of the Court and alleging misjoinder.

6. On 20 May 2014, Ongaya J after hearing the application dated 2 April 2014 ordered that the *status quo* be maintained and that the main suit be heard on 3 December 2014.

7. On 3 December 2014, the Claimants sought and were granted leave again to file an Amended Claim before 18 December 2014, and the Respondents were directed to file amended Responses before 14 January 2015.

8. On 19 January 2015, the Claimants retracted and informed the Court that an Amended Memorandum of Claim had been filed on 10 March 2014. They sought a hearing date and the Court fixed hearing for 7 December 2015.

9. On 19 February 2015, the Claimants purported to file a Further Amended Memorandum of Claim in which a 4<sup>th</sup> Respondent was included.

10. The Further Amended Memorandum of Claim was filed outside the agreed timelines and without leave and the Court *suo moto* strikes it out.

11. On 24 February 2015, the Claimants filed a motion seeking

1....

2. THAT the Respondents by themselves, their agents, servants, employees, representatives and persons claiming under them as purchasers and/or third parties be permanently restrained from interfering with the Claimants/Applicants peaceful stay or in any way threatening or intimidating them pending the hearing and determination of the matter at High Court Industrial Cause No. 263/13 which has been set down for hearing on 7<sup>th</sup> December 2015.

3. THAT the Claimants be allowed to continue cultivating the parcels allocated to them during their employment pending the hearing and determination of the main cause.

4. THAT pending the hearing and determination of this application inter partes, a temporary restraining order be granted and the Claimants be allowed to plant their crops on portions allocated to them during their employment.

5. ....

12. The Court certified the motion urgent on 24 February 2015, and directed that it be served for *inter partes* hearing. It was heard on 17 March 2015.

13. After being served with the motion, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed a Notice of Preliminary Objection on 16 March 2015.

14. On 17 March 2015, Mirugi Kariuki & Co. Advocates filed a Notice of Appointment for one Lawrence Karani Silas as an Interested Party.

### **Claimants' case on the motion**

15. The Claimants case is that a consent order was entered between the parties on 20 May 2014 in which the Claimants were to continue cultivating and occupying the housing accommodation on the land they used prior to filing of the suit pending the determination of this suit.

16. According to the Claimants, they had an employer/employee relationship with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents which was unfairly terminated and they had not been paid their pending dues and that one Gathee was interfering with their peaceful occupation and use of the land parcels.

17. Mr. Ogeto who took the 1<sup>st</sup> and 2<sup>nd</sup> Respondents case submitted that there was a consent order in place which protected the Claimants and any violation could be redressed using the normal procedures.

18. Mr. Karanja took the Interested Party's (one Lawrence Karani Silas) case. He submitted that the consent was not binding upon the Interested Party and that the Claimants had no claim over the land, the employment relationship having come to an end in 2003. He further submitted that the application was not founded on any law.

### **Evaluation**

19. Order 2 of the motion as sought cannot be granted. It is not the practice to grant permanent orders at an interlocutory stage. The Claimants have not demonstrated any exceptional circumstances to warrant the grant of a permanent injunction.

20. As regards orders 3 and 4 of the motion, the Court has perused the record and confirmed that Ms. Agimba for the Claimant and Mr. Ogeto for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents consented to an order being entered in the following terms

a) THAT the status quo be maintained so that the claimants continue cultivating and occupying housing accommodation on the land they used prior to filing the suit and until determination and disposal of the case.

b) THAT the Chief of the area in which the land in issue is to assist in implementation of the order (1) above

c).....

d).....

21. It is clear from the consent order that the Claimants were to continue in occupation of the land. At the time of the consent order, the parties did not disclose that any third party (Gathee or Lawrence Karani Silas) had an interest in the land. The Respondents were in a position at the time to know whether they had entered into any dealings with a third party.

22. The interests of the Third party have not been disclosed. The Court cannot speculate on whether such interest is legal, beneficial or inchoate or at all.

23. The consent order of 20 May 2014 is still in place and it will serve no purpose to grant orders 3 and 4 of the motion.

24. Further the said Mr. Gathee or Lawrence Karani Silas are not parties to the present Cause and it would be unjust/unfair to make orders against them without affording them an opportunity to be heard.

